Remarks/Arguments:

Further to the Amendment filed April 30, 2004, a Declaration of Peter E. Roberts Under 37 C.F.R. § 1.132 is submitted herewith, including the following papers:

(1) Declaration of Peter E. Roberts under 37 C.F.R. § 1.132

(2) Exhibit 1 *Curriculum Vitae* of Peter Elwyn Roberts

(3) Exhibit 2 Table showing pH values of yoghurt, meat mixture, and cooked product for samples; a chart of pH values; and a chart of cook loss

(4) Exhibit 3 Tables of data for Sample Nos. 1 and 7

(5) Exhibit 4 Table of data for Sample Nos. 2 to 6

(6) Exhibit 5 Photograph comparing a standard mild yoghurt sausage product with a sour yoghurt sausage product

The Declaration of Peter E. Roberts is submitted as evidence that Applicants' claimed invention is non-obvious over the prior art cited in the Office Action. The Examiner's consideration of the Declaration is respectfully requested.

As set forth by the Declarant, the addition of significant quantities of an additive such as yoghurt or other fermented milk products to achieve a low calorie product leads to undesired cook loss. Declaration at Paragraph 5. Providing a low calorie cooked sausage product therefore represents competing interests, i.e., 1) adding significant quantities of an additive such as a fermented milk product to a meat mixture to achieve a low calorie cooked sausage product, and 2) avoiding the undesired cook loss associated with added quantities of fermented milk product. Paragraph 6. Nevertheless, it has been discovered that by setting a minimum pH limit of the mixture of meat emulsion and fermented milk product at about 5.5 or more, despite adding 10 to 40% by weight of the fermented milk product, a reduced calorie meat product with reduced cook loss is obtained. Paragraph 7.

Test Results

As a preliminary matter, the Declarant corrects the following explanation provided in the Amendment of Enclosure 4 (now Exhibit 5 of the Declaration), which explanation was based on the undersigned's misunderstanding of that photograph:

> Enclosure 4 is a photograph comparing a standard sausage product with one that contains sour yogurt. As shown, the standard sausage product is drier, causing it to separate at a cut in the sausage. In contrast, the sausage product that contains sour yogurt has adequately retained moisture to avoid cracking.

That explanation of the photograph was erroneous. Specifically, the Declarant now explains that Exhibit 5 (previously Enclosure 4) compares a standard mild yoghurt sausage product (i.e., one that is currently prepared with a mixture pH of about 5.5 or more and 10-40% by weight of mild yoghurt) with a sour yoghurt sausage product (i.e., one that is prepared with a lower mixture pH due to the sour yoghurt ingredient). As stated by the Declarant, the standard sausage product exhibits a high quality, gelled structure, indicative of moisture retention, and the stripped surface of the standard sample is smooth, with no excess moisture, which provides further evidence of reduced cook loss (approximately 0%). In contrast to the standard product, the Declarant explains that the sour yoghurt sausage product fails to exhibit a high quality, gelled structure, and the stripped surface of the sour yoghurt sample is rough, with a sheen of moisture, indicative of excess cook loss (approximately 10%). Further, the Declarant states that the cross-sectional sliced surface of the sour yoghurt sample is ruffled, which provides further evidence of undesirable cook loss. Paragraph 15.

The Declarant also explains the significance of the cook loss tests (first presented in the Amendment filed April 30, 2004) for meat mixtures below and above the lower pH limit of about 5.5. Paragraphs 10 - 15. As stated by the Declarant, the test results show that cook loss of a meat mixture including 10 - 40% of a fermented milk product or a mild yoghurt is sharply reduced when the pH of the mixture is about 5.5 or more as opposed to a pH just below that value. The dramatic reduction in cook loss demonstrated by these tests results is stated by the Declarant to be unexpected in that the relatively small range of pH values for the mixture just above and below about 5.5 resulted in such large differences in cook loss. Paragraph 16.

These unexpected results reported in the Declaration are probative of non-obviousness.

Prior Art

The Declarant also addresses the prior art rejection of claims 1 - 5, 7, 10 - 24, 26, 28, 31, 32, and 34 - 47 based on Japanese Patent No. 07-107941 to Minoru et al. in view of U.S. Patent No. 4,362,750 to Swartz.

In contrast to an objective of retaining moisture in a low calorie cooked sausage product, the problem Minoru sought to overcome was that associated with producing a fermented (i.e., uncooked) meat product utilizing a relatively low curing and aging temperature (5 - 10°C), as stated in the Declaration at Paragraph 21. Even if one modified the fermented product of Minoru by adding substantially more fermented milk product (contrary to the teaching of Minoru against adding more than 10%), and even if one cooked the product of Minoru instead of

fermenting it, the Declarant was offered no guidance by Minoru regarding how to control cook loss and fails to suggest the claimed lower pH limit of about 5.5. Paragraph 22.

In further contrast to the objective of retaining moisture, and in contrast to Minoru's objective to produce a fermented meat product utilizing a relatively low curing and aging temperature, Swartz seeks to alter the taste of sausage by the inclusion in the sausage of a cultured dairy product (but only 2% to 8%), as stated in the Declaration at Paragraph 24. The Declarant confirms that like Minoru, Swartz is completely silent with respect to an overall pH of the meat mixture. Paragraph 25.

Accordingly, the Declarant states that neither Minoru nor Swartz suggests to the Declarant a lower pH limit for the meat mixture of about 5.5, that Swartz discourages one from the claimed range of 10 - 40% by weight of fermented milk product, and that Minoru discourages one from using more than 10% by weight of fermented milk product. Paragraph 27. Further, the Declarant states that because of the different objectives of Swartz and Minoru (which also differ from the inventors' objective of reducing cook loss), and because Swartz discourages one from using more than 2 - 8% by weight of cultured dairy product, the Declarant would not have been motivated to combine Minoru and Swartz to reduce cook loss. Paragraph 28. And even if he were to combine the teachings of Minoru and Swartz, the Declarant stated that he would nevertheless be left without any suggestion to set a lower pH limit for the meat mixture of about 5.5.

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FJC-102US

Conclusion

For the foregoing reasons, and in view of the Declaration submitted herewith, withdrawal of the rejection based on the proposed combination of Minoru and Swartz is respectfully requested.

Respectfully submitted,

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Enclosures: 1.132 Declaration
Exhibits 1 - 5

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The Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (703-872-9306) on the date shown below.

May 12, 2004
Joshua L. Cohen